

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

PAUL G. EDMONSON  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Casey Gwinn**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**MEMORANDUM OF LAW**

**DATE:** June 10, 2004

**TO:** Honorable Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Sole Member of San Diego Data Processing Corporation May Direct Board of Directors to Appoint City's Chief Information Officer as the Chair of the Board

**BACKGROUND**

On May 5 and 19, 2004, the City Manager presented Reports 04-090 and 04-108 on the San Diego Data Processing Corporation, a nonprofit public benefit corporation, to the Committee on Rules, Finance, and Intergovernmental Relations [Committee]. The Committee directed the City Attorney to provide the City Council with an opinion on whether the Council of the City of San Diego, acting on behalf of the City of San Diego as the sole member [Member] of San Diego Data Processing Corporation [DPC], may direct DPC's Board of Directors [Board] to confirm the City's Chief Information Officer [CIO] as the Chair of the Board.

**QUESTIONS PRESENTED**

May the sole Member direct the Board to confirm the City's CIO as the Chair of the Board?

**SHORT ANSWER**

Yes, so long as the Bylaws of San Diego Data Processing Corporation provide that the Board's Chairperson shall be the Member's Chief Information Officer.

**ANALYSIS**

DPC is a nonprofit public benefit corporation with the City as its sole Member. Nonprofit public benefit corporations are established, controlled, and governed by their articles of

incorporation and bylaws. See Cal. Corp. Code §§ 5120, 5130–5142, 5150–5151. The bylaws establish the procedures for governing and operating the corporation’s conduct. The bylaws serve three purposes:

1. To provide rules for matters not covered by statute;
2. To alter specific default rules that control by statute in the absence of a contrary bylaw; and
3. To provide a ready reference to the governing laws and rules for the corporation’s attorney, directors, and officers.

CEB, *Advising California Nonprofit Corporations* § 6.1 (2nd ed. 1998, 2004).

Bylaws may be adopted, amended, or repealed by approval of the member or members of a non-profit public benefit corporation. Cal. Corp. Code § 5150(b). Specifically, DPC’s Second Amended and Restated Bylaws [Bylaws] provide that “[n]ew Bylaws may be adopted or the Bylaws may be amended or repealed by the Member.” Second Amended and Restated Bylaws of San Diego Data Processing Corporation, Inc., art. IX, § 1. Thus, the Member has the authority to amend the Bylaws to achieve their stated purpose.

The current Bylaws state that “officers of the Board shall be chosen annually by the Board of Directors and each shall hold office until he or she shall resign or shall be removed or otherwise disqualified to serve. . . .” Second Amended and Restated Bylaws of San Diego Data Processing Corporation, Inc., art. III, § 4, sub. 2. The Member would have to amend this section of the Bylaws to provide that the Chair of the Board shall be the City’s CIO.

Presently, DPC’s Bylaws provide that “[o]fficers may serve, if elected, no more than three successive terms in the same office.” Second Amended and Restated Bylaws art. III, § 4, sub. 2. There is no statutory limitation on the number of times an officer may be reelected to consecutive terms. Therefore, in the event that the Member wanted the CIO to serve as Chair of the Board beyond three consecutive terms, this section should be amended to remove this limitation, permitting the CIO to serve a perpetual term as the Board’s Chairperson.

### **CONCLUSION**

It is entirely appropriate for the Member to adopt, amend, or repeal the Bylaws of San Diego Data Processing Corporation. This includes adopting a bylaw that designates the City’s CIO as DPC’s Chair of the Board. Additionally, the Bylaws’ current term limitation for

officers would be amended to exempt the office of Chairperson. This exemption would permit the CIO to serve consecutive terms.

CASEY GWINN, City Attorney

By

Paul G. Edmonson  
Deputy City Attorney

PGE:smf  
ML-2004-11